Accommodation at Work

FREQUENTLY ASKED QUESTIONS

Workers

New Nouveau Brunswick

NEW BRUNSWICK HUMAN RIGHTS COMMISSION
COMMISSION DES DROITS DE LA PERSONNE DU NOUVEAU-BRUNSWICK

WORKSAFE TRAVAIL SÉCURITAIRE NB

How a worker's continued employment is ensured after a permitted leave or workplace accident.

Rights, obligations and best practices for workers under New Brunswick's

- *Workers' Compensation Act*
- *Employment Standards Act*
- *Human Rights Act*

Q: If I'm injured at work, or fall ill due to an occupational disease, how is my job projected while I recover?

A: Your first line of defence is section 42.1 of the *Workers' Compensation (WC) Act* – the "re-employment obligation."

To qualify for this protection, your employer must employ 10 or more workers and you must:

- Have experienced a workplace injury, injury recurrence or occupational disease by accident.
- Be entitled to workers' compensation benefits through WorkSafeNB.
- Have worked for your employer for at least one year.

Even if you do not qualify for the "re-employment obligation" under the *WC Act*, you may have a right to return to work under the *Human Rights (HR) Act*.

Q: What protection does the re-employment obligation offer me?

A: If your employer is subject to the re-employment obligation under the *WC Act*, they must offer you employment when you're ready to return to work, according to the following rules:

- If you are capable of performing the duties required of your pre-accident job, your employer must re-employ you in that job, or an equivalent one, with no loss of seniority or benefits.

- If you are **not** capable of performing those duties, your employer must offer you any available alternate position better suited to your current abilities, with no loss of seniority or benefits.

Your employer must make this offer of re-employment within the following time frames:

- Within one year of the date you began to receive workers' compensation benefits, if they employ between 10 and 19 workers.
- Within two years of the date you began to receive workers' compensation benefits, if they employ 20 workers or more.

Some limitations related to industry may apply. The right to return to work under the *IIR Act* may continue beyond two years, and it applies regardless of the number of employees. Please review the *Accommodation at Work* guide for detailed information.

Q: If I am unable to return to my pre-accident job because of my workplace injury, how is the alternate offer of employment determined?

A: WorkSafeNB will work with both you and your employer to arrive at a reasonable offer of accommodation.

Q: What if the process fails?

If your employer is subject to the re-employment obligation and:

- Refuses to re-employ you even though you are capable of performing your pre-accident job;
- Refuses to accommodate you in a new position more appropriate to your post-accident abilities;
- Does not make what WorkSafeNB determines to be a reasonable offer of accommodation;

you can complain to the Employment Standards (ES) Branch of the Department of Post-Secondary Education, Training and Labour (PETL) of New Brunswick. ES officers will investigate your complaint and can compel your employer to meet their re-employment obligation under the *WC Act*. If you don't file a complaint against your employer, WorkSafeNB can do it on your behalf. You may also file a complaint with the Human Rights Commission (HRC).

Q: What happens if WorkSafeNB believes my employer has made a reasonable offer of accommodation, and I disagree?

If you don't believe your employer's offer of accommodation is reasonable, you can:

- Appeal WorkSafeNB's decision with WorkSafeNB's Appeals Tribunal.
- File a complaint with the ES Branch.
- File a complaint with the HRC.

If the Appeals Tribunal upholds WorkSafeNB's decision and you still believe the offer to be unreasonable, you can:

- File a complaint with the HRC. Keep in mind that refusing an offer of accommodation could mean that WorkSafeNB temporarily reduces or even suspends any workers' compensation benefits you might be receiving.
- File a complaint with the ES Branch.

Q: What happens if I wasn't injured at work, but I had to leave my job for a period of time due to a family member's illness? Is my job still protected?

A: Yes. In certain circumstances, the *Employment Standards (ES) Act* of New Brunswick requires employers to allow you to return to work after a "permitted leave."*

The following permitted leaves are itemized under the *ES Act*:

- Maternity leave
- Child care leave
- Bereavement leave
- Compassionate care leave
- Court leave
- Family responsibility leave
- Sick leave
- Reservists' leave

*Please refer to the *Accommodation at Work* guide for details on the time frames for each of these leaves.

What protection does the return-to-work clause of the *ES Act* offer me?

The *ES Act* states that your employer, within certain time frames:

- Cannot dismiss, suspend or lay you off during a permitted leave.
- Must allow you to resume work in the position held immediately before the beginning of the leave – or an equivalent position – with no decrease in pay.

What happens if my employer refuses to allow me to return to work?

You can file a complaint with the ES Branch of PETL. Officers will investigate your complaint, and can compel your employer to comply with their obligations under the *ES Act*. In the case of maternity leave or an absence due to a disability, you may also file a complaint with the HRC.

What if my complaint under the *ES Act* is resolved in favour of my employer, and I am still dissatisfied with the result?

You can file an appeal with the Labour and Employment Board. In the case of maternity leave or an absence due to a disability, you can also complain to the HRC.

Q: Does the New Brunswick *ES Act* apply to federally regulated industries?

A: No. If your employer's business is federally regulated, you will have to file a complaint instead under the *Canada Labour Code*. For more information, please refer to the *Accommodation at Work* guide.

Q: What is my right to return to work under the *Human Rights Act*?

A: The right to return to work and to accommodation under the *HR Act* is separate and broader than under the *WC Act* or *ES Act*. A worker may file a human rights complaint at any time within one year of a refusal to allow a return to work or to make reasonable accommodation, whether or not processes are underway under the *WC Act* or the *ES Act*.

All employees who must stop working due to a physical or mental disability have the right to return to their original job without loss of seniority, benefits or pay if they can perform the work after reasonable accommodation is made by the employer. If they cannot perform the original job, they have a right to a modified or alternate job with reasonable accommodation and without loss of seniority, benefits or pay.

This right exists regardless of the size of the employer or the number of years worked, and regardless of whether the disability resulted from work or another cause. There is no predetermined time when this right expires.

Accommodation means to adjust rules, policies, job descriptions, practices, facilities and equipment to enable a person to continue to work or to return to work. Examples of accommodation include accessible bathrooms, stress leave and light duties.

However, the employer is not required to make an accommodation, to hold a position open or to offer a position if it would cause "undue hardship" to the employer. What constitutes undue hardship depends on several factors. For more information, refer to the *Accommodation at Work* guide.

Q: Does the New Brunswick *Human Rights Act* apply to federally regulated industries?

A: No. If your employer's business is federally regulated, you will have to file a complaint instead under the Canadian *Human Rights Act*, administered by the Canadian Human Rights Commission. For more information, please refer to the *Accommodation at Work* guide.

Q: How does the human rights complaint process work?

A: You must file a human rights complaint with the HRC within one year of the discrimination. Time extensions are available in exceptional cases. The process is free and there is protection against retaliation. Complaints are investigated and conciliated by HRC staff. If a substantiated complaint cannot be resolved, a Human Rights Board of Inquiry may hold a hearing and issue an order.

For more information, please refer to the *Accommodation at Work* guide, or contact:

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1 Portland Street
P.O. Box 160
Saint John, NB E2L 3X9
1 800 222-9775
www.worksafenb.ca

Department of Post-Secondary Education,
Training and Labour
Employment Standards Branch
P.O. Box 6000
Fredericton, NB E3B 5H1
1 888 452-2687
www.gnb.ca/0308/index-e.asp

Human Rights Commission
P.O. Box 6000
Fredericton, NB E3B 5H1
1 888 471-2233
TDD number: 506 453-2911
email: hrc.cdp@gnb.ca
www.gnb.ca/hrc-cdp

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